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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GERALDINE WOOD,

Plaintiff and Appellant,

v.

BALDWIN CREST REALTY,

Defendant and Respondent.

B285492

(Los Angeles County  
Super. Ct. No. BC596506)

APPEAL from judgment of the Superior Court of Los Angeles County, Benny C. Osorio, Judge (Ret.). Affirmed.

Geraldine Wood, in pro. per., for Plaintiff and Appellant.

Hartsuyker, Stratman & Williams-Abrego, Jason M. Pemstein; Veatch Carlson, Serena L. Nervez, for Defendant and Respondent.

Plaintiff and appellant Geraldine Wood appeals from a judgment following an order granting summary judgment in favor of defendant and respondent Baldwin Crest Realty (Baldwin Crest) in this personal injury action. On appeal, Wood contends her suit is not barred by the two year statute of limitations. We conclude that summary judgment was proper because Wood became suspicious that her living conditions were causing her injuries more than two years before she filed the lawsuit. We affirm.

## **FACTS AND PROCEDURAL HISTORY**

### **The Complaints**

Wood filed a complaint on October 1, 2015, and an amended complaint on November 24, 2015, for negligence against Baldwin Crest and co-defendant Laura Farwell. Wood leased an apartment from Baldwin Crest around February 2, 2006, and was a tenant through February 2, 2013. She alleged that Baldwin Crest negligently maintained the unit, and during the course of living in the apartment, Wood began suffering from health problems.

### **Baldwin Crest's Motion for Summary Judgment and Supporting Evidence**

On June 23, 2017, Baldwin Crest filed a motion for summary judgment on the ground that the complaint was barred by the applicable statute of limitations. In support,

Baldwin Crest submitted Wood's deposition, documents produced at her deposition, Wood's residential lease, an unlawful detainer stipulation and judgment, and the complaints.

In her deposition, Wood attributed the following health issues to unhealthy living conditions in her apartment: impaired sinuses, strep throat, parathyroid glandular issues, urinary tract infections, and hair loss. The unhealthy living conditions were a slow-running bathroom sink, water damage, potential mold, and backed up sewage. A repairman who replaced the bathroom sink showed Wood a round silver tube that was "completely filled with rust." In December 2011, Wood's doctor revealed she had a problem with her parathyroid gland. Around May or June 2012, Wood called the property management company and the Health and Housing Department to inspect a bedroom wall that was "completely filled with circles." Wood thought the damage was mold, but she was not sure. On June 1, 2012, the County of Los Angeles Department of Public Health issued a violation notice to repair a damaged wall for bubbling paint, and to repair a leak in the kitchen faucet. Another health department employee inspected the apartment. After Wood showed him a jar of her hair, the employee stated that if she needed to go to court, "you subpoena me because I'm going to go to court with you."

Wood had recurrent urinary tract infections, such that on July 20, 2012, the Women's Clinic told her not to come

back for them. Wood learned of a mass on her parathyroid gland through x-rays performed on September 1, 2012.

On February 1, 2013, Wood moved out of the apartment unit. A March 19, 2013 report states that Wood's thyroid was enlarged and had multiple nodules. On October 25, 2013, following a biopsy of her parathyroid gland, Wood was diagnosed with a parathyroid mass. When asked if she could recall the first date that health conditions arose related to her living conditions, Wood mentioned her hair loss and urinary tract infections, but stated that it "really hit hard" when she found out about the parathyroid mass because her doctor asked if she lived in a rural area.

### **Opposition to the Motion for Summary Judgment and Trial Court Proceedings**

Wood filed an opposition to the motion for summary judgment and separate statement on June 12, 2017. The documents are not in the record on appeal<sup>1</sup> and do not include supporting evidence.

Following a hearing on June 19, 2017, the court granted Baldwin Crest's motion for summary judgment and dismissed the case with prejudice. The court found that Baldwin Crest met its burden of proof that Wood's suit was

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<sup>1</sup> We denied Wood's request to augment the record to include her prematurely filed opposition to the motion for summary judgment. After reviewing her pleading, it is clear Wood did not provide supporting evidence, legal authority, or argument on the statute of limitations issue.

barred by the statute of limitations. Because Wood did not provide the court with evidence to contradict Baldwin Crest's assertions, the court found there was no triable issue of fact with respect to the statute of limitations issue. Wood filed a timely notice of appeal.

## DISCUSSION

### Standard of Review

A defendant may be entitled to summary judgment when “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c); *Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347 (*Hampton*).) To meet its initial burden, a defendant moving for summary judgment must show “one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) If the defendant makes this showing, the burden shifts to plaintiff to produce admissible evidence showing a triable issue of material fact exists. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, at p. 850.) ““The plaintiff . . . may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists . . . .” ([Code Civ. Proc.,

§ 437c], subd. (o)(2); [citations].)’ [Citations.]” (*Andrews v. Foster Wheeler LLC* (2006) 138 Cal.App.4th 96, 101, fn. omitted.)

We review de novo the trial court’s grant of summary judgment. (*Hampton, supra*, 62 Cal.4th at p. 347; *Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 286.) We take the facts from the record that was before the trial court and consider all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained. (Code Civ. Proc., § 437c, subd. (c); *Hampton, supra*, 62 Cal.4th at p. 347.) “We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.” (*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037; accord, *Hampton, supra*, 62 Cal.4th at p. 347.)

### **Statute of Limitations**

Wood contends her suit is not barred by the two year statute of limitations, and that summary judgment should not have been granted. We disagree.

Personal injury actions, whether based on wrongful conduct or negligence, must be commenced within two years from when the plaintiff’s action accrued. (Code Civ. Proc., §§ 312, 335.1.) The action accrues on the date of injury unless application of the discovery rule delays the time of accrual. (*Goldrich v. Natural Y. Surgical Specialities, Inc.*

(1994) 25 Cal.App.4th 772, 779.) “The rule, which “may be expressed by the Legislature or implied by the courts” [citation], ‘postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.’ [Citation.]” (*Communities for a Better Environment v. Bay Area Quality Management Dist.* (2016) 1 Cal.App.5th 715, 722; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.)

“Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her. As we said in *Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93] and reiterated in *Gutierrez v. Mofid* (1985) 39 Cal.3d 892], the limitations period begins once the plaintiff “‘has notice or information of circumstances to put a reasonable person on inquiry . . . .’” [Citation.] A plaintiff need not be aware of the specific ‘facts’ necessary to establish the claim; that is a process contemplated by pretrial discovery.” (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110–1111, fn. omitted; italics omitted.)

Baldwin Crest submitted evidence establishing Wood was suspicious that her living conditions were causing her multiple injuries and health problems as early as June 2012. Around that time, a health department employee correlated Wood’s health problems with her living conditions, and stated that he would support her if she went to court to seek intervention. Wood subjectively believed her health problems were caused by her living conditions while she still

resided in the apartment prior to moving out in February 2013. Although Wood may not have been as certain in June 2012 or February 2013 that her living conditions caused her injury as she was on October 25, 2013 when her doctor inquired if she lived in a rural area, her testimony leaves no doubt that she was suspicious. The above circumstances would put a reasonable person on inquiry. Because Wood did not submit any evidence in opposition creating a triable issue of fact, her claims fell outside the statute of limitations as a matter of law. Summary judgment was properly granted.



## **DISPOSITION**

The judgment is affirmed. Defendant and Respondent Baldwin Crest Realty is awarded costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIM, J.